IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 147 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

ARJUN VELJI THAKKAR

Appearance:

1. Criminal Appeal No. 147 of 1992

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

MR CH VORA, Advocate for Respondent No. 1.

None present for Resp.No.2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/08/2001

ORAL JUDGEMENT

Heard learned APP Shri ND. Gohil for the appellant State of Gujarat and Shri C.H. Vora, learned Counsel for the respondent No.1. Respondent No.2 is the

original complainant. Though he was duly served, he was not appearing through any one and therefore, learned Single Judge of this court passed an order on 30.3.2000 for securing his presence by issuing bailable warrant. Inspite of that, no one appears for respondent No.2 and it appears that he is not interested. In that view of the matter, appeal is heard and decided after hearing the learned APP for the State and Shri CH Vora for the respondent No.1.

In the instant case, the complainant - present respondent No.2 Manharlal Patel took the sample of turmeric powder on 23.2.1988 from the dinning hall of the accused - respondent No.1. The report of public analyst Ex.20 shows that it was adulterated in the sense that oil soluble pink and orange coloured coaltar colour was detected. However, report of the Central Food Laboratory Ex.27 rules out coaltar colour in the sample, but according to the Central Food Laboratory report, there was a mixture of rice powder, which was not permissible under Rule 44(h) of the Prevention of Food Adulteration Rules, 1955. Hence, complaint being Criminal Case No. 5979/1988 was filed before the Court of learned Chief Judicial Magistrate, Kutch-Bhuj.

The learned Chief Judicial Magistrate acquitted the accused by judgement and order dated 4.6.1991 on the ground that the sanction was defective as without applying mind the authority granted its sanction. I am not much impressed by the reasoning assigned by the learned Judge for acquitting the accused on the ground that sanction was defective. At the same time, I am not inclined to interfere with the impugned order of acquittal after a lapse of more than 13 years of commission of the offence, where both the reports of Public analyst and the Central Food Laboratory are contrary to each other. It would not be safe to convict the accused after so many years, more particularly when the original complainant Food Inspector is not at all interested in the matter because though he is served, he is not appearing through any one.

In view of the above, this appeal fails and is dismissed.

(B.J.Shethna, J.)
*/Mohandas